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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,419	02/07/2002	Darren Dofher	TERA P2311 PTUS	1711

7590 11/25/2003

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EXAMINER
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STAHL, MICHAEL J

ART UNIT	PAPER NUMBER
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2874

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/071,419

Applicant(s)

DOFHER, DARREN

Examiner

Mike Stahl

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 1-51 and 59-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 52-54 and 56-58 is/are rejected.
- 7) ☒ Claim(s) 55 and 57 is/are objected to.
- 8) ☒ Claim(s) 1-64 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,5,7. 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

Applicant's election with traverse of Group VI (claims 52-58) in Paper No. 11 is acknowledged. The traversal is on the basis that the claims directed to the invention of Group V would not be subject to the restriction if they were amended to clarify that the member discussed therein is the protector defined by Group VI.. This is not found persuasive because the claims are examined and treated as filed by the applicant. Since the claims of Group V as presently written have separate utility from those of Group VI as indicated in the last office action, they are restrictable.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Objections***

Claim 57 is objected to because it refers to "said hollow interior", while its parent claim 52 refers to a space. Applicant should amend claim 57 by changing "hollow interior" to "space" in order to be consistent with claim 52.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 52 is rejected under 35 U.S.C. 102(b) as being anticipated by Schlafly (US 3473339, cited in the information disclosure statement).

Schlafly discloses a protector **17** including an elongate member having sidewalls **18/19** defining a space therebetween, with a closed upper end **20** and an open lower end. The space between the sidewalls is 'suitable' for receiving and retaining two or more fiber optic cables in stacked array at least in the sense that it is sufficiently large to accommodate stacked fiber optic cables. It is noted that the term "fibre optic" in the preamble is given patentable weight only insofar as the body of the claim refers to "being suitable for receiving and retaining" fiber optic cables, and the term "for subsurface burial" is not given patentable weight because it denotes an intended use and because it does not add any structural limitations to the claimed protector.

Claim 52 is rejected under 35 U.S.C. 102(b) as being anticipated by Duvall et al. (US 5962809).

Duvall discloses a fiber optic cable protector for underground installation including an elongate member **20** having sidewalls **26** defining a space **28** therebetween, with a closed upper end **22** and an open lower end. The space **28** is suitable for receiving and retaining two or more fiber optic cables **12**. Although only two unstacked cables are shown in figure 2, it is noted that Duvall discloses an alternate height dimension which would accommodate an extra pair of cables (col. 4 lines 5-10), in which case the fiber optic cables would be stacked in pairs.

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Claims 52 and 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Keller (US 5668912).

Keller discloses a fiber optic cable protector **2** comprising an elongate member having sidewalls **8** defining a space therebetween, with a closed upper end (drawn as the bottom end in the figures) and an open lower end (drawn as the top end in the figures). It is noted that “upper” and “lower” as recited in claim 52 are relative terms which depend upon the perspective of an external viewer or external spatial reference system. The defined space is suitable for receiving and retaining stacked optical fiber cables **21**.

As to claim 56, the protector includes a break-resistant strip **7**. As to claim 58, the protective strips **7** are molded in place in an upper region of the protector. As to claim 57, it is noted that the electrical wires **11** themselves offer some degree of protection and resistance to breakage. Wires **11** are located in the defined space in some embodiments (e.g. in figure 3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duvall et al. (cited above) in view of Ross et al. (US 4820007).

As to claims 53 and 54, Duvall does not disclose a tapered ridge shape for the upper and lower ends. Ross discloses an optical fiber cable closure **20** for underground installation having tapered upper and lower end (see fig. 1), and teaches that this shape resists crushing loads when buried (col. 5 lines 6-14). Since Duvall is also concerned with protecting a buried cable, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the Duvall channel member with a tapered shape as taught by Ross in order to further protect the enclosed cables.

*Allowable Subject Matter*

Claim 55 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As to claim 55, the art of record fails to describe or suggest providing locking portions with the lower end for closing together the sidewalls of the protector of claim 52. It is noted that the three references applied to claim 52 all teach open lower ends and do not mention any need or purpose for closing them by joining the sidewalls.

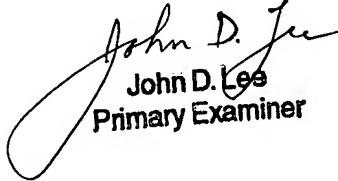
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*Conclusion*

Any inquiry concerning this communication should be directed to Mike Stahl at (703) 305-1520. Official communications eligible for submission by facsimile may be faxed to (703) 872-9318 (before final) or (703) 872-9319 (after final). Inquiries of a general or clerical nature (e.g., a request for a missing form or paper, etc.) should be directed to the Technology Center 2800 receptionist at (703) 308-0956 or to the technical support staff supervisor at (703) 308-3072.

MJS

Michael J. Stahl  
Patent Examiner  
Art Unit 2874

  
John D. Lee  
Primary Examiner

November 20, 2003